CHAPTER 15
BENEFITS

[Prior to 8/15/86; See Deferred Compensation Program, 270—Ch 4]

581—15.1(19A) Health benefits. The director is authorized by the executive council of Iowa to administer health benefit programs for employees of the state of Iowa.

15.1(1) An insurance carrier or other entity proposing to provide group benefits or a prepaid group health care plan to state employees must, as an entity or in terms of the plan proposed, be eligible to contract with the state of Iowa as provided in Iowa Code section 509A.6, and shall provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

a. Proposed solicitation brochures, membership literature, and master contracts. The content of these materials shall require prior approval by the department before distribution to any other party. The information about any health benefit plan which has regional or provider restrictions shall include a list of its service counties, a list of available physician providers by name, specialty, and address, and a list of all other contracted providers..

b. Proposed premium rate and administrative service charges.

c. Evidence of agreement to the state's administrative requirements including a defined remittance methodology, negotiated enrollment/eligibility guidelines, ability to direct bill all former employees, a defined coverage methodology for employees electing to change carriers, the ability to offer a conversion health plan, extend coordination of benefits, rules for subrogation, confirmation of compliance with COBRA, TEFRA, OBRA, and any other administrative requirements deemed reasonable.

15.1(2) The executive council of Iowa shall determine the amount of the state's contribution toward each individual non-contract-covered employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

15.1(3) Health maintenance organizations (HMO) and organized delivery systems (ODS). Beginning with the benefit year starting January 1, 2001, any HMO or ODS seeking approval to offer benefits to state employees shall provide evidence of accreditation by the National Committee for Quality Assurance (NCQA) or the Joint Commission on Accreditation of Health Care Organizations (JCAHO). When an HMO or ODS seeks approval to offer benefits to state employees and has not achieved the required accreditation, the director of the department may waive the accreditation requirement for up to two consecutive benefit years. The granting of such a waiver shall be based, in part, on information submitted by the HMO or ODS that outlines its intent to achieve accreditation. If the HMO or ODS has not achieved the required accreditation by the end of the second benefit year, the director shall report this information to the executive council, and may recommend termination of the contract.

a. Definitions. The following definitions shall apply when used in this rule:

"Employee" means any employee of the state of Iowa covered by Iowa Code chapter 509A.

"HMO" means any health maintenance organization as defined in Iowa Code section 514B.1(3).

"ODS" means any organized delivery system as defined in rule 641—201.2(135,75GA,ch158).

"Operational" means having entered into health care service contracts with enrollees and providers and providing services in accordance with those contracts.

b. HMO minimum qualifications. The state of Iowa may contract to provide health care benefits to state employees with any HMO that provides the following to the department not later than March 1 preceding the plan year for which services are proposed:

(1) Evidence that it is licensed to do business in the state of Iowa by the insurance division of the Iowa department of commerce.

(2) Evidence that it has been operational for not less than one year, unless the requirement is waived by the director.

(3) Evidence that it offers, either itself or by contract, a benefit plan to all Medicare recipients that supplements but does not duplicate Medicare benefits.

(4) Evidence that it has filed with the insurance division of the Iowa department of commerce its most recent quarterly and annual reports in compliance with Iowa Code section 514B.12 and rule IAC 191—40.12(514B).

(5) The dates of its most recent examinations by the insurance division of the Iowa department of commerce and by the Iowa department of public health as required in Iowa Code section 514B.24, an accounting of any discrepancies discovered in such examinations and an indication of the extent to which such discrepancies have been corrected.

(6) A master contract which includes provisions requiring delivery of written termination notice by either party to the contract to the other party not less than 60 calendar days prior to contract termination.

(7) Proposed premium rates supported by:

- Actual claims and utilization experience;
- Quoted trend factors;
- Quality assurance indicators;
- A description of the rating methodology used to develop the rate quote;
- A description of the application of the rating methodology used in developing the rate quote;
- Other potential administrative issues not listed.

(8) Annual data and reports in accordance with the director's specifications. If all other requirements have been met and it is the initial year that an HMO has been authorized to offer benefits to state employees, failure to comply with the state's group-specific data requirement shall not result in the removal of the HMO from the state benefit plan.

c. ODS minimum qualifications. The state of Iowa may contract to provide health care benefits to state employees with any ODS which provides evidence to the department that the ODS:

(1) Has received approval of its application from the Iowa department of public health; and

(2) Has been licensed to do business in the state of Iowa by the Iowa department of public health.

If the requirements specified in subparagraphs (1) and (2) have been met, the ODS shall also be required to provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

1. Evidence that the ODS has been operational for not less than one year, unless the requirement is waived by the director.

2. Evidence that the ODS offers, either itself or by contract, a benefit plan to all Medicare recipients which supplements, but does not duplicate, Medicare benefits.

3. Evidence that the ODS has filed its most recent financial statements in compliance with IAC 641—201.12(135,75GA,ch158).

4. The dates of its most recent examination by the commissioner of insurance in compliance with IAC 641—subrule 201.12(5).

5. A master contract which includes provisions requiring delivery of written termination notice by either party to the contract to the other party not less than 60 calendar days prior to contract termination. Such information must also include a list of the counties included in the ODS' service area, a list of available ODS physician providers by name, specialty, and address, and a list of all other contracted providers.

6. Proposed premium rates supported by:
- Actual claims and utilization experience;
- Quoted trend factors;
- Quality assurance indicators;
- A description of the rating methodology used to develop the rate quote;
- A description of the application of the rating methodology used in developing the rate quote; and
- Other potential administrative issues not listed.

7. A copy of the surety bond referenced in IAC 641—subrule 201.12(3).

d. ODS compliance. Each ODS shall be governed by the following provisions:

(1) Annual data reports shall be furnished to the director in accordance with the director's specifications. If all other requirements have been met, and it is the initial year that an ODS has been authorized to offer benefits to state employees, failure to comply with the state group specific data requirement shall not result in the removal of the ODS from the state benefit plan.

(2) The results of the most recent member satisfaction survey and a copy of the most recent report filed with the department of public health regarding measures of quality and access shall be furnished to the director.

581—15.2(19A) Dental insurance. The director is authorized by the executive council of Iowa to administer dental insurance programs for employees of the state of Iowa, except for employees of the board of regents. An insurance carrier or other entity proposing to provide a group dental insurance plan or a prepaid group dental care plan to state employees shall, as an entity or in terms of the plan proposed be eligible to contract with the executive council of Iowa as provided in Iowa Code section 509A.6, and shall provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

15.2(1) Their proposed solicitation brochures, membership literature, and master contracts. Content of these materials in terms of clarity of benefit, service, and plan funding descriptions shall require approval by the department.

15.2(2) Their proposed premium rates, administrative service charges, and reserve interest rates.

581—15.3(19A) Life insurance. The director is authorized by the executive council of Iowa to administer life insurance programs for employees of the state of Iowa, except for employees of the board of regents.

An insurance carrier or other entity proposing to provide a group life insurance plan to state employees shall, as an entity or in terms of the plan proposed, be eligible to contract with the executive council of Iowa as provided in Iowa Code section 509A.6, and shall provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

15.3(1) Their proposed solicitation brochures, membership literature, and master contracts. Content of these materials in terms of clarity of benefit, service, and plan funding descriptions shall require approval by the department.

15.3(2) Their proposed premium rates, administrative service charges, and reserve interest rates.

581—15.4(19A) Long-term disability insurance. The director is authorized by the executive council of Iowa to administer long-term disability insurance programs for employees of the state of Iowa, except for employees of the board of regents.

An insurance carrier or other entity proposing to provide group long-term disability benefits, administrative services, or insurance services to state employees shall, as an entity or in terms of the plan proposed, be eligible to contract with the executive council of Iowa as provided in Iowa Code section 509A.6, and shall provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

15.4(1) Their proposed solicitation brochures, membership literature, and master contracts. Content of these materials in terms of clarity of benefit, service, and plan funding descriptions shall require approval by the department.

15.4(2) Their proposed premium rates if an insurance plan, proposed plan funding rates if a benefits administration plan, proposed administrative service charges, and proposed reserve interest rates.

15.4(3) Employees who receive benefits under the state workers' compensation program shall have those benefits, except for benefits designated as medical costs pursuant to Iowa Code section 85.27 and that portion of benefits paid as attorneys' fees approved pursuant to Iowa Code section 86.39, deducted from any state long-term disability benefits received where the workers' compensation injury or illness was a substantial contributing factor to the award of long-term disability benefits. Disability benefit payments will be further reduced by primary and family social security payments as determined at the time social security disability payments commence, railroad retirement disability income, and any other state-sponsored sickness or disability benefits payable.

581—15.5(19A) Health benefit appeals.

15.5(1) A member who disagrees with a group health benefit company's decision on the application of group contract benefits may:

a. File a written appeal with the respective company as defined in the group contract, or

b. File a written appeal with the commissioner of insurance at the department of commerce.

15.5(2) A member who disagrees with an organized delivery system's decision on the application of group contract benefits may:

a. File a written appeal with the respective ODS as defined in the group contract, or

b. File a written appeal with the director of the department of public health.

581—15.6(19A) Deferred compensation.

15.6(1) *Definitions.* The following definitions shall apply when used in this rule:

"Account" means any fixed annuity contract, variable annuity contract, life insurance contract, documents evidencing mutual funds, variable or guaranteed investments, or combination thereof provided for in the plan.

"Beneficiary" means the person or estate entitled to receive benefits under the plan following the death of the participant.

"Director" means the director of the Iowa department of personnel.

"Employee" means a nontemporary (permanent full-time or permanent part-time) employee of the employer, including full-time elected officials and members of the general assembly, except employees of the board of regents. For the purposes of enrollment, elected officials-elect and members-elect of the general assembly shall be considered employees. Persons in a joint employee relationship with the employer shall not be considered employees eligible to participate in the plan.

"Employer" means the state of Iowa and any other governmental employer that participates in the plan.

"Governing body" means the executive council of the state of Iowa.

"Group" means one or more employees.

"Investment provider" means a company authorized under this rule to issue an account or administer the records of such an account or accounts under the deferred compensation plan authorized by Iowa Code section 509A.12 and chapter 19A.

"Normal retirement age" means 70½ years of age, unless an earlier age is specified by a participating employee pursuant to the plan's catch-up provision.

"Participating employee" means any employee or former employee of the employer who is currently deferring or who has previously deferred compensation under the plan and who retains the right to benefits under the plan.

"Plan" means the state of Iowa deferred compensation 457 plan and trust as set forth in this document, and as it may be amended from time to time, and which has been authorized by Iowa Code section 509A.12 and chapter 19A.

"Plan administrator" means the designee of the director who is authorized to administer the plan.

"Plan year" means a calendar year.

"Trustee" means the director of the Iowa department of personnel.

15.6(2) *Plan administration.*

a. The director is authorized by the governing body to administer a deferred compensation program for employees of the state of Iowa and to enter into contracts and service agreements with deferred compensation product vendors for the benefit of state of Iowa employees and on behalf of the state of Iowa. This rule shall govern all investment options and participant activity for the funds placed in the program.

b. The trustee may at any time amend, modify, or terminate this plan without the consent of the participant (or any beneficiary thereof). All amendments that are adopted in emergency rule making shall be effective immediately upon filing with the administrative rules coordinator. Amendments that are adopted pursuant to nonemergency rule making shall be effective no sooner than 35 days after publication in the Iowa Administrative Bulletin. The plan administrator shall provide sufficient notice to participating employees and investment providers of all amendments to the plan. No amendment shall deprive participants of any of the benefits to which they are entitled under this plan with respect to deferred amounts credited to their accounts before the effective date of the amendment. If the plan is curtailed or terminated, or the acceptance of additional deferred amounts is suspended permanently, the plan administrator shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred before the amendment, modification, or termination. Payment of benefits will be deferred until the participant would otherwise have been entitled to a distribution pursuant to the provisions of the plan.

c. Location of account documentation. The investment providers shall send the original annuity policies, contracts or account forms to the plan administrator. Failure to do so may result in termination of an investment provider's service agreement. All such original documents shall be kept by the plan administrator. Participating employees may review their own documentation during normal work hours at the department, but may not under any circumstances remove the documentation from the premises. Each participating employee shall be provided a copy of the documentation establishing the employee's account with an investment provider by the investment provider, subject to the terms and conditions of the investment provider's service agreement with the plan administrator. The copy being furnished to the participating employee shall be clearly marked that it is not the original. Original documents shall be held by the plan administrator until proceeds are disbursed under the terms of the participating employee's or beneficiary's chosen method of disbursement.

d. Participation in this plan by an employee shall not be construed to give a contract of employment to the participant or to alter or amend an existing employment contract of the participant, nor shall participation in this plan be construed as affording to the participant any representation or guarantee regarding the participant's continued employment.

e. The employer, trustee, and the investment providers do not represent or guarantee that any particular federal or state of Iowa income, payroll, personal property or other tax consequences will result because of the participant's participation in the plan. The participant is obligated to consult with the participant's own tax representative regarding all questions of federal or state income, payroll, personal property or other tax consequences arising from participation in the plan.

f. The investment providers shall, subject to the trustee's consent, have the power to appoint agents to act for the investment providers in the administration of accounts according to the terms, conditions, and provisions of their service agreements with the employer. Investment providers are responsible for the conduct of their agents. The plan administrator may require an investment provider to remove the authority of any agent to provide services to the plan or plan participants when cause has been shown that the agent has violated these rules or state or federal law or regulation related to the governance of the plan or agent conduct.

g. Plan expenses. Expenses incurred by the plan administrator while administering the plan, including fees and expenses approved by the plan trustee for investment advisory, custodial, recordkeeping, and other plan administration and communication services, and any other reasonable and necessary expenses or charges allocable to the plan that have been incurred for the exclusive benefit of plan participants and that have been approved by the plan trustee may be charged to the short-term interest that has accrued in the Deferred Compensation Trust Fund created by 1998 Iowa Acts, chapter 1039, section 1, prior to the allocation of funds to a participant's chosen investment provider.

h. Advisory committee and vendor panel. There shall be appointed by the plan trustee an advisory committee and vendor panel.

(1) The advisory committee shall consist of representatives appointed by the plan trustee of the legislative, judicial, and executive branches of government, public sector employees through their authorized collective bargaining representatives, and the private sector. Such representatives shall convene in regularly scheduled meetings, in a manner, time and place chosen by the plan trustee or designee to advise in the administration of the plan and the plan investment options. Such meetings shall occur no less than biannually.

(2) The vendor panel shall consist of a representative of each active investment provider under the plan and a representative of the authorized sales agents of the investment providers appointed by the plan trustee. Such representatives shall convene in regularly scheduled meetings in a manner, time and place chosen by the plan trustee or designee to aid in the efficient administration of the investment options under the plan. Such meetings shall occur no less than biannually. An executive committee of the vendor panel may be appointed by the plan trustee to convene at such times as may be necessary to aid in the administration of the investment options under the plan. The executive committee shall consist of the representatives of the sales agents of the investment providers, a representative of the active mutual fund investment provider(s), and a representative of the active fixed and variable annuity provider(s).

i. Time periods. As necessary or desirable to facilitate the proper administration of the plan and consistent with the requirements of Section 457 of the Internal Revenue Code (IRC), the plan administrator may modify the time periods during which a participating employee or beneficiary is required to make any election under the plan, and the time periods for processing these elections by the plan, including the making or amending of a deferral agreement, the making or amending of investment provider selections, the election of distribution commencement dates or distribution forms.

j. Supplementary information and procedures. Any explanatory brochures, pamphlets, or notices distributed by the plan shall be distributed for information purposes and shall not override any provision of this plan or give any person any claim or right not provided for under this plan. Notwithstanding the foregoing, to the extent that the terms of this plan document authorize the adoption of supplementary guidelines or procedures, any publication announcing such guidelines or procedures may be relied upon by the persons to whom it is distributed, unless and until modified by a subsequent publication, or revocation of the publication by the plan administrator. Any procedural requirement described in any such publication shall be binding, as applicable, to the same extent as if such requirement were set forth in this plan document. In the event any form or other document used in administering this plan, including but not limited to enrollment forms and marketing materials, conflicts with the terms of the plan, the terms of the plan shall prevail.

k. This plan, and any properly adopted amendments, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors and assignees and on all beneficiaries of the participant.

15.6(3) *Rights of participating employees.*

a. The assets and income of the plan shall be held by the trustee for the exclusive benefit of the participating employee or the participating employee's beneficiary.

b. The rights of a participating employee under this plan shall not be subject to the rights of creditors of the participating employee or any beneficiary and, except as expressly provided herein, shall be exempt from execution, attachment, prior assignment, or any other judicial relief, or order for the benefit of creditors or other third persons.

c. Designation of beneficiary. Upon enrollment, a participating employee must designate a beneficiary or beneficiaries. A participating employee may change the employee's designated beneficiary or beneficiaries at any time thereafter by providing the plan administrator with written notice of the change on the form prescribed by the plan administrator.

d. Neither a participating employee, nor the participating employee's beneficiary, nor any other designee shall have the right, except as expressly provided herein, to commute, sell, assign, transfer, borrow, alienate, use as collateral or otherwise convey the right to receive any payments hereunder which payments and right thereto are expressly declared to be nonassignable and nontransferable.

15.6(4) *Trust provisions.*

a. Trustee. The trustee shall be the director of the Iowa department of personnel.

b. Investment options. The trustee shall adopt various investment options for the investment of deferred amounts by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan. The trustee may remove options if it is deemed to be in the best interest of participants or for other good cause as determined by the trustee. Following such adoption or removal of investment options by the trustee, participating employees or their beneficiaries shall be entitled to select from among the available options for investment of their deferred amounts. In the event options are removed, the trustee may require participating employees or their beneficiaries to move balances to an alternative option offered by the plan. If participating employees or their beneficiaries fail to act in response to the written notice, the trustee shall transfer moneys out of the removed option to an alternative option chosen by the trustee (normally placed into a fixed guaranteed account or, if offered as an investment option offered in the plan, a money market fund). By exercising such right to select investment options or by failing to respond to notice to transfer from a removed option where the trustee moves the money on behalf of participating employees or their beneficiaries, participating employees and their beneficiaries agree that none of the plan fiduciaries will be liable for any investment losses or lost investment opportunities that are experienced by participating employees or their beneficiaries in the investment option(s) they select or that are selected for them if they fail to take appropriate action with regard to a removed fund or that may be implemented by the plan administrator in accordance with the plan.

c. Designation of fiduciaries. The trustee, the plan administrator, and the persons they designate to carry out or help carry out their duties or responsibilities are fiduciaries under the plan. Each fiduciary has only those duties or responsibilities specifically assigned to fiduciaries under the plan, contractual relationship, trust or as delegated to fiduciaries by another fiduciary. Each fiduciary may assume that any direction, information or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction or information. No fiduciary will be responsible for the malfeasance, misfeasance or nonfeasance of any other fiduciary, except where the fiduciary participated in such conduct, or knew or should have known of such conduct in the discharge of the fiduciary's duties under the plan and did not take reasonable steps to compel the cofiduciary to redress the wrong.

d. Fiduciary standards.

(1) All fiduciaries shall discharge their duties with respect to the plan and trust solely in the interest of the participating employees and their beneficiaries and in accord with Iowa Code section 633.123. Such duties shall be discharged for the exclusive purpose of providing benefits to the participating employees and beneficiaries and, if determined applicable, defraying expenses of the plan.

(2) The investment providers shall discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and as defined by applicable Iowa law.

e. Trustee powers and duties. The trustee may exercise all rights or privileges granted by the provisions of the plan and trust and may agree to any alteration, modification or amendment of the plan. The trustee may take any action respecting the plan or the benefits provided under the plan which the trustee deems necessary or advisable. Persons dealing with the trustee shall not be required to inquire into the authority of the trustee with regard to any dealing in connection with the plan. The trustee may employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist, and may act without independent investigation upon their recommendations. Instead of acting personally, the trustee may employ one or more agents to perform any act of administration, whether or not discretionary.

f. Trust exemption. This trust is intended to be exempt from taxation under § 501(a) of the IRC and is intended to comply with § 457(g) of the IRC. The trustee shall be empowered to submit or designate appropriate agents to submit this plan and trust to the IRS for a determination of the eligibility of the plan under IRC § 457, and the exempt status of the trust under IRC § 501(a), if the trustee concludes that such a determination is desirable.

g. Notwithstanding any contrary provision of the plan, in accordance with Section 457(g) of the Internal Revenue Code, all amounts of compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the plan. Any trust under the plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state of Iowa. All plan assets shall be held under one or more of the following methods:

(1) Compensation deferred under the plan shall be transferred to a trust established under the plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, compensation deferred under the plan shall be transferred to a trust established under the plan not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(2) Notwithstanding any contrary provision of the plan, including any annuity contract issued under the plan, in accordance with Section 457(g) of the Internal Revenue Code, compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in Section 401(g) of such Code, issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of participants and beneficiaries under the plan. For this purpose, the term "annuity contract" does not include a life, health or accident, property, casualty, or liability insurance contract. Amounts of compensation deferred under the plan shall be transferred to an annuity contract described in Section 401(f) of the Internal Revenue Code within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a contract described in Section 401(f) of such Code not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(3) Notwithstanding any contrary provision of the plan, in accordance with Section 457(g) of the Internal Revenue Code, compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of participants and beneficiaries under the plan. For purposes of this paragraph, the custodian of any custodial account created pursuant to the plan must be a bank, as described in Section 408(n) of the Internal Revenue Code, or a person who meets the nonbank trustee requirements of paragraphs (2) to (6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of nonbank trustees.

Amounts of compensation deferred under the plan shall be transferred to a custodial account described in Section 401(f) of the Internal Revenue Code within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a custodial account described in Section 401(f) of such Code not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

15.6(5) *Absolute safeguards of the employer, trustee, their employees, and agents.*

a. The trustee and the plan administrator are authorized to resolve any questions of fact necessary to decide the participating employee's rights under this plan. An appeal of a decision of the plan administrator shall be made to the trustee, who shall render a final decision on behalf of the plan.

b. The trustee and the plan administrator are authorized to construe the plan and to resolve any ambiguity in the plan and to apply reasonable and fair procedures for the administration of the plan. An appeal of a decision of the plan administrator shall be made to the trustee, who shall render a final decision on behalf of the plan.

c. The participating employee specifically agrees that the employer, the trustee, the plan administrator, or any other employee or agent of the employer, shall not be liable for any loss sustained by the participating employee or the participating employee's beneficiary for the nonperformance of duties, negligence, or any other misconduct of the above-named persons except that this paragraph shall not excuse malicious or wanton misconduct.

d. The trustee, plan administrator, investment providers, their employees and agents, if in doubt concerning the correctness of their actions in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the identity of the person to receive the payment, or until the filing of an administrative appeal under Iowa Code chapter 17A, and thereafter in any state court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them.

e. The employer, the trustee, the plan administrator, their employees and agents are hereby held harmless from all court costs and all claims for the attorneys' fees arising from any action brought by the participating employee, or any beneficiary thereof, under this plan or to enforce their rights under the plan, including any amendments hereof.

f. The investment providers shall not be required to participate in any litigation concerning the plan except upon written demand from the plan administrator or trustee.

15.6(6) *Eligibility.*

a. Initial eligibility. Any nontemporary executive, judicial or legislative branch employee who is regularly scheduled for 20 or more hours of work per week or who has a fixed annual salary is eligible to defer compensation under this rule except employees of the board of regents. An elected official-elect and elected members-elect of the general assembly are also eligible provided deductions meet the requirements set forth in the plan. Final determination on eligibility shall rest with the plan administrator.

b. Eligibility after terminating deferral of compensation. Any employee who terminates the deferral of compensation may choose to reenroll in the plan in accordance with the plan. Final determination on eligibility to reenroll shall rest with the plan administrator.

15.6(7) *Enrollment and termination.*

a. Enrollment. Employees may enroll in the plan at any time. The original account application form and the state of Iowa's required enrollment forms shall be submitted to the plan administrator for approval. An investment provider account shall become effective upon receipt of the first deduction or, where applicable, upon the transfer of assets from another investment provider. In all instances, eligible employees must enter into an agreement to defer compensation prior to the beginning of the month in which the agreement shall take effect. Employees are responsible for timely submission of payroll documents to initiate salary deductions. Enrollment is permitted for elected officials-elect and elected members-elect of the general assembly according to these rules.

b. Availability of forms. It is the responsibility of each employee interested in participating in the program to obtain the necessary forms from the employer or from the investment providers. It is the responsibility of each agency to inform its employees as to where and how they may obtain the necessary forms. The forms shall be prescribed by the plan administrator, and agencies shall be advised as to their availability.

c. Termination of participation. A participating employee may terminate participation in the plan provided notification is received by the plan administrator at least 15 days prior to the employee's next monthly deduction. Termination of plan participation does not provide for the disbursement of funds unless done in accordance with the distribution requirements of the plan.

15.6(8) *Communications.*

a. All enrollments, elections, designations, applications and other communications by or from an employee, participant, beneficiary, or legal representative of any such person regarding that person's rights under the plan shall be made in the form and manner established by the plan administrator and shall be deemed to have been made and delivered only upon actual receipt by the person designated to receive such communication. The employer or the plan shall not be required to give effect to any such communication that is not made on the prescribed form and in the prescribed manner and that does not contain all information called for on the prescribed form.

b. All notices, statements, reports, and other communications from the plan to any employee, participant, beneficiary, or legal representative of any such person shall be deemed to have been duly given when delivered to, or when mailed by first-class mail to, such person at that person's last mailing address appearing on the plan records.

15.6(9) *Deductions from earnings.*

a. When deducted. Each participating employee shall have the option as to whether the entire monthly amount of deferred compensation will be deducted from the first paycheck of the month or the second paycheck of the month, or will be equally divided between the first and second paychecks of the month. If the monthly deferral cannot be divided into two equal payments, the third option is not available. Deductions will not be taken from the third paycheck of a month. Deductions may be allocated to more than one active investment provider. A participating employee may allocate deductions to one inactive investment provider and one or more active investment providers.

b. Deferral amount changes. Participating employees may increase or decrease their monthly deferral amount as frequently as provided for by procedures established by the plan administrator to ensure the efficient administration of the plan.

c. Maximum deferral limits. Participating employees' deferrals may not exceed the lesser of the maximum limitation or 33 1/3 percent of their includable compensation as defined under IRC Section 457. In practice, it may be considered that participating employees' deferrals may not exceed 25 percent of the amount of their annual income subject to federal income tax withholding less contributions to IPERS or any other applicable retirement program and certain taxable compensation excluded from wages under the IRC, determined without taking into account contributions made to this plan. The maximum limitation is $7,500, adjusted for the calendar year to reflect increases in cost of living in accordance with Sections 457(e)(15) and 415(d) of the Internal Revenue Code.

d. Minimum amount deferred. The minimum amount of deferred compensation to be deducted from the earnings of a participating employee during any month shall be $25.

e. Method of payment. Deferred amounts shall be forwarded to the investment providers by issuance of one warrant or electronic remittance following each pay period, regardless of the number of individual accounts, accompanied by a listing of participant accounts and the amounts to be credited to each participant account. Deferred amounts will be remitted in a timely manner consistent with the requirements of IRS regulations. However, no deferrals or remittances are made when a third payday occurs in a month. Investment providers must minimize crediting errors and provide timely and accurate credit resolution.

f. The employer shall cause all deferrals and transfers to be invested as soon as practicable after such amounts are withheld from the participating employee's salary or wages or are available from the transferor plan, as applicable.

g. Deferred compensation or tax-sheltered annuity participation—maximum contribution. Employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to participate in one or the other of the programs, but not both. If, in the same calendar year, an eligible participating employee changes from the deferred compensation plan to a tax-sheltered annuity plan or vice versa, the maximum deferral for that calendar year for both plans combined may not exceed the maximum permitted under IRC § 402(g), 403(b), 415, or 457, whichever is applicable based upon the employee's participation.

15.6(10) *Contribution catch-up.*

a. Contribution catch-up. A participating employee may elect to catch up contributions during the employee's last three tax years before reaching the year of the employee's normal retirement age. This catch-up provision, which when added to the maximum amount that is allowed, shall not exceed the lesser of one of the following:

(1) Fifteen thousand dollars, or such larger amount permitted under IRC Section 457, as determined by IRC 415(d) and the U.S. Treasury regulations thereunder, or

(2) The employee's maximum deferral limit plus the unused portion of any prior plan year's previous deferral limit for which the employee was eligible to participate in this or any other eligible deferred compensation plan.

b. If the participating employee does not utilize this provision during the first of the three catch-up years, the "lost" catch-up amount shall not be added to either the second or third year of the catch-up period. If the participating employee does not utilize this provision during the first two years of the catch-up period, the "lost" catch-up amount shall not be added to the third year of the catch-up period. The amount to be deferred shall remain constant from the previous calendar year unless a change request is submitted.

c. Participating employees may designate as their normal retirement age the age that will be attained in any year that is not earlier than the earliest year in which the employee will be eligible to retire without actuarial or similar reduction under IPERS or another applicable retirement system and that is not later than the plan's normal retirement age. Once a participating employee has utilized the catch-up provision or a comparable provision of another eligible deferred compensation plan, that participating employee's normal retirement age may not thereafter be changed.

15.6(11) *Tax status.*

a. FICA and IPERS. The deferred amount elected in the authorization to deduct form shall be included in the participating employee's gross wages for purposes of determining FICA withholding, IPERS, peace officers' and judicial retirement contributions, as applicable, until the maximum taxable wages established by law have been reached.

b. Federal and state income taxes. The amount of earned compensation deferred under the agreement is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRC Section 457.

15.6(12) *Disposition of funds.*

a. Termination of employment. A participating employee who has terminated employment with the employer (including retirement) may request to defer distribution of funds or withdraw funds under any option available under the plan and the chosen investment according to the following:

(1) The participating employee shall elect, within 30 calendar days after termination, a distribution date on a form approved by the plan administrator.

(2) The distribution date shall be no later than the mandatory commencement date, which is April 1 of the calendar year following the later of:

1. The calendar year in which the participating employee attains age 70½, or

2. The calendar year in which the participating employee terminates employment with the employer.

(3) The participating employee shall indicate on the appropriate form when funds are to be paid. If the participating employee wishes to begin receiving disbursements within six months, then the distribution date and the distribution option must be specified.

(4) Where allowable under the plan, if the distribution election is not made by the later of 30 days following termination or 30 days following attainment of age 70, the participating employee shall be deemed to have elected a distribution date 180 days subsequent to termination. If the participating employee does not exercise the right to one additional election to further delay the distribution of funds during this year, the funds will be distributed to the participating employee in a lump sum within a reasonable time after the expiration of this period.

(5) If a participant has elected, in accordance with the plan, to defer the commencement of distributions beyond the first permissible payout date, then the participant may make an additional election to further defer the commencement of distributions, provided that the election is filed before distributions actually begin and the later commencement date meets the required distribution commencement date provisions of Sections 401(a)(9) and 457(d)(2) of the IRC. A participant may not make more than one such additional deferral election after the first permissible payout date.

For purposes of the preceding paragraph, the "first permissible payout date" is the earliest date on which the plan permits payments to begin after separation from service, disregarding payments to a participant who has an unforeseeable emergency or attains age 70½, or under the in-service distribution provisions of the plan.

(6) When a participating employee elects to start receiving benefits after termination, the amount withdrawn must meet the following criteria consistent with the requirements of IRC § 457:

1. Be substantially nonincreasing; and
2. Meet minimum distribution requirements.

(7) A participating employee may elect to have an account distributed in one of the following methods, subject to the specific terms of the chosen investment option:

1. A single lump sum payment;
2. Substantially nonincreasing installment payments for a period of years (payable on an annual, semiannual, quarterly, or monthly basis) which extends no longer than the life expectancy of the participating employee or such longer period as permitted;
3. Partial lump sum payment of a designated amount, with the balance payable in substantially nonincreasing installment payments for a period of years, as described above;
4. Annuity payments (payable on an annual, quarterly, or monthly basis) for the participating employee's lifetime, or for the lifetimes of the participating employee and the employee's beneficiary if permitted;
5. Such other form of installment payments as may be approved by the plan administrator consistent with the limitations of the plan, the investment provider, and the applicable laws and regulations governing such choice. No distribution method may be made or changed after the commencement date for such distribution method.

(8) If a participating employee works beyond the normal retirement age or the plan's designated normal retirement age, the participating employee shall notify the plan administrator on the appropriate forms of the selected retirement option within 30 days after termination of employment.

(9) If a participating employee is rehired by an employer and is eligible to participate in the deferred compensation plan, the employee may, within 30 days following the employee's new hire date, notify the plan administrator in writing of the intent to void the previous election to delay receipt of the funds. This option is not available if the participating employee entered into a settlement option prior to the rehire date.

b. Unforeseeable emergency. A participating employee may request that the plan administrator allow the withdrawal of some or all of the funds held in the participating employee's account based on an unforeseeable emergency. Forms must be completed and returned to the plan administrator for review in order to consider a withdrawal request. The plan administrator shall determine whether the participating employee's request meets the definition of an unforeseeable emergency as provided for in U.S. Treasury Regulation 1.457-2(h). In addition to being extraordinary and unforeseeable, an unforeseeable emergency must not be reimbursable:

(1) By insurance or otherwise;

(2) By liquidation of the participating employee's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or

(3) By cessation of deferrals under the plan.

Upon the plan administrator's approval of an unforeseeable emergency distribution, the participating employee will be required to stop current deferrals for a period of no less than six months.

A participating employee who disagrees with the initial denial of a request to withdraw funds on the basis of an unforeseeable emergency may request that the director reconsider the request by submitting additional written evidence of qualification or reasons why the request for withdrawal of funds from the plan should be approved.

c. Voluntary in-service distribution. A participant who is an active employee of an eligible employer shall receive a distribution of the total amount payable to the participant under the plan if the following requirements are met:

(1) The total amount payable to the participant under the plan does not exceed $5,000 (or the dollar limit under Section 411(a)(11) of the Internal Revenue Code, if greater);

(2) The participant has not previously received an in-service distribution of the total amount payable to the participant under the plan;

(3) No amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and

(4) The participant elects to receive the distribution.

The plan administrator may also elect to distribute the accumulated account value of a participant's account without consent, if the above criteria are met.

This provision is available only once in the lifetime of the participating employee. If funds are distributed under this provision, the participating employee is not eligible under the plan to utilize this provision at any other time in the future.

d. Plan-to-plan transfers.

(1) Participating employees who have accepted employment with a new employer that offers an eligible plan as defined in U.S. Treasury Regulation § 1.457-2(c)(1) may transfer their account values to their new employer's plan if that plan provides for the acceptance of the account and the funds are placed in a like plan in accordance with IRC § 457.

(2) Transfers from other eligible deferred compensation plans as defined in U.S. Treasury Regulation § 1.457-2(c)(1) to this plan will be accepted at the participating employee's request if such transfers are in cash or covered under an investment option currently offered under the plan. Any such transferred amount shall not be subject to the yearly deferral limitations of the plan, provided, however, that the actual amount deferred during the calendar year under both plans shall be taken into account in calculating the deferral limitation for that year. For purposes of determining the limitation set forth in the catch-up provision of the plan, years of eligibility to participate in the prior plan and deferrals under that plan shall be considered.

e. Transfers under domestic relations orders.

(1) To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a participating employee's account may be paid or set aside for payment to a spouse, former spouse, or child of the participating employee. The employer will determine whether the judgment, decree, or order is valid and binding on the plan, and whether it is issued by a court or agency with jurisdiction over the plan. The judgment, decree or order must specify which of the participating employee's accounts are to be paid or set aside, the valuation date of the accounts and, to the extent possible, the exact value of the accounts. Where necessary to carry out the terms of such an order, a separate account shall be established with respect to the spouse, former spouse, or child who shall be entitled to choose investment providers in the same manner as the participating employee. Any amount so set aside for a spouse, former spouse, or child shall be paid out in a lump sum at the earliest date that benefits may be paid to the participating employee, unless the judgment, decree, or order directs a different form of payment. Unless otherwise subsequently suspended or altered by federal law, all applicable taxes shall be withheld and paid from this lump sum distribution. However, the distribution and all applicable taxes shall be reported as if received by and paid by the participating employee. This shall not be construed to authorize any amount to be distributed under the plan at a time or in a form that is not permitted under Section 457 of the Internal Revenue Code.

(2) A right to receive benefits under the plan shall be reduced to the extent that any portion of a participating employee's account has been paid or set aside for payment to a spouse, former spouse, or child pursuant to these rules or to the extent that the employer or the plan is otherwise subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of any account or of any distributions therefrom. The participating employee shall be deemed to have released the employer and the plan from any claim with respect to such amounts in any case in which:

1. The employer, the plan, or any plan representative has been served with legal process or otherwise joined in a proceeding relating to such amounts,
2. The participating employee has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process or by mail from the employer or a plan representative to the participating employee's last-known mailing address, and
3. The participating employee fails to obtain an order of the court in the proceeding relieving the employer and the plan from the obligation to comply with the judgment, decree, or order.

(3) Neither the employer nor any plan representative shall be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of the participating employee's account or of any distribution therefrom. Notwithstanding the foregoing, if the employer, the plan, or a plan representative is joined in any such proceeding, a plan representative shall take such steps as it deems necessary and appropriate to protect the terms of the plan.

f. Method of payment.

(1) Payments will not be initiated by the investment providers or the plan administrator until at least 31 calendar days after termination of employment. Investment providers will, upon written instruction from the plan administrator, make payments directly to the participating employee or to the participating employee's beneficiary, in satisfaction of the employer's continuing obligation under the plan. This shall not, however, give the participating employee or beneficiary any right to demand payment from the employer or the investment provider(s).

(2) Benefits paid to the participating employee shall be paid in accordance with the payment options elected by the participating employee. The form of payment and the settlement options available shall be as provided by each of the investment providers, consistent with the limitations of the plan. Amounts payable with respect to the participating employee will be paid consistent with the times specified by applicable U.S. Treasury regulations which are not later than the time determined under IRC § 401(a)(9) relating to incidental benefits.

g. Incompetence of payee. If the plan administrator shall find that any person to whom any amount is payable under the plan is unable to care for that person's affairs, is a minor, or has died, any payment due the person, or that person's estate, may be paid to the person's spouse, a child, a relative, or any other person maintaining or having custody of such person, unless a prior claim therefor has been made by a duly appointed legal representative. Any such payment shall be a complete discharge of all liability under the plan thereof.

h. Federal and state withholding taxes. It shall be the responsibility of the investment providers, when making payment directly to the participating employee or the participating employee's beneficiary, to withhold the required federal and state income taxes, to remit them to the proper government agency on a timely basis, and to file all necessary reports as required by federal and state regulations, including W-2s.

15.6(13) *Death of a participant.*

a. When a participant dies, the following information shall be provided by the participant's beneficiary to the plan administrator: participating employee's name, social security number and a certified copy of the death certificate. Upon receipt of the above information, the plan administrator shall initiate procedures so that the proceeds being held in the plan may be distributed as provided in the agreement, unless an irrevocable election is made by the beneficiary to defer benefits to no later than the deceased participant's normal retirement date or in accordance with the participant's irrevocable election on file with the plan administrator.

b. After the death of a participating employee, the participating employee's beneficiary shall have the right to amend the participating employee's or the beneficiary's own investment specification by signing and filing with the plan administrator a written amendment on a form and in the procedural manner approved by the plan administrator. Any change in an investment specification by a beneficiary shall be effective on a date consistent with these rules and the specifications of the investment provider. The right of a beneficiary to amend an investment specification shall terminate on the last day available for an election concerning the form of payment.

c. Payments to a beneficiary.

(1) If a participating employee dies after distribution of the account has begun, distribution shall continue to be paid to the beneficiary at the same or greater rate as under the method of distribution in effect at the time of the participating employee's death.

(2) If a participating employee dies before payments have begun, payments to a beneficiary must comply with one of the following requirements:

1. The entire account value must be distributed within five years following the participating employee's death; or

2. Distribution of the account must begin on or before December 31 of the calendar year following the participating employee's death and the entire account must be paid over a period not extending beyond 15 years (or if the beneficiary is the participating employee's spouse, the life expectancy of the beneficiary); or

3. If the beneficiary is the participating employee's surviving spouse, distribution of the account may be delayed until December 31 of the calendar year in which the participating employee would have attained age 70½.

(3) If distributions have not begun, the beneficiary shall choose a distribution commencement date by filing an election with the plan administrator within 120 days following the participating employee's death. This election shall not be changed once it has been made. If no election is made within 120 days following the participating employee's death, the distribution commencement date will be December 31 of the calendar year following the participating employee's death and shall be completed according to the applicable time period specified in subparagraph (2) above.

(4) The beneficiary shall elect the form of payment based upon the options then available. Distributions to a beneficiary shall be completed within the applicable time period specified in subparagraph (2) above. Such election is irrevocable after the thirtieth day preceding the date on which benefits will commence.

(5) Failure to file an election as to the form of payment will result in the plan administrator's making a lump sum payment to the beneficiary according to subparagraph (3) above.

15.6(14) *Investment providers.*

a. Participation. The investment providers under the plan are authorized to offer new accounts and investment products to employees only if awarded a service agreement through a competitive bid process. A list of active investment providers shall be provided, upon request, to any employee or other interested party. Inactive investment providers shall participate to the extent necessary to fully discharge their duties under the applicable federal and state laws and regulations, the plan, their service agreements or contracts with the employer, and their investment accounts or contracts with participating employees.

b. Investment products. Investment products shall be limited to those that have been selected by the plan administrator. No new accounts shall be available to employees for life insurance under the plan.

c. Reports and consolidated statements. The investment providers will provide various reports to the plan administrator as well as consolidated statements, newsletters, and performance reports to participants as specified in their service agreements.

d. Dividends and interest. The only dividend or interest options available on policies or funds are those where the dividend or interest remains within the account to increase the value of the account.

e. Quality standards. An investment provider that issues individual or group annuity contracts, or that has issued life insurance policies, must have:

(1) A minimum credit rating of at least "A-" from the A.M. Best Corporation financial strength rating system, or equivalent ratings from two other major, recognized ratings services, and

(2) A minimum number of years in existence greater than 12.

f. In lieu of (1) and (2) above, companies that provide mutual funds shall be selected by the plan administrator using a selection process that includes quality standard requirements as set forth in a competitive bid process and in the investment provider's service agreement.

g. Minimum contract requirements. In addition to meeting selection requirements, an investment provider must meet and maintain the requirements set forth in its contract or service agreement with the state of Iowa.

h. Removal from participation. Failure to comply with the provisions of these rules, the investment provider contract or service agreement with the employer, or the terms and conditions of the investment provider account with the participating employee, may result in termination of an investment provider contract or service agreement, and all rights therein shall be exercised by the employer.

15.6(15) *Marketing and education.*

a. Orientation and information meetings. Employers may hold orientation and information meetings for the benefit of their employees during normal work hours using materials developed and approved by the plan administrator. Active investment providers may make presentations upon approval of individual agency or department authorities during non-work hours. There shall be no solicitation of employees by investment providers at an employee's workplace during the employee's working hours, except as authorized in writing by the plan administrator.

b. General requirements for solicitation.

(1) An active investment provider may solicit business from participants and employees through representatives, the mail, or direct presentations.

(2) Active investment providers and representatives may solicit business at a state agency's work site only with the prior permission of the agency director or other appropriate authority.

(3) All investment providers or representatives may not conduct any activity with respect to a registered investment option unless the appropriate license has been obtained.

(4) An investment provider or representative may not make a representation about an investment option that is contrary to any attribute of the option or that is misleading with respect to the option.

(5) An investment provider or representative may not state, represent, or imply that its investment options are endorsed or recommended by the plan administrator, a state agency, the state of Iowa, or an employee of the foregoing.

(6) An investment provider or representative may not state, represent, or imply that its investment option is the only option available under the plan.

c. Disclosure.

(1) Enrollment. When soliciting business for an investment product, an active investment provider or representative shall provide each participating employee or eligible employee with a copy of the approved disclosure for that option. If a variable annuity product has several alternative investment choices, the participant must receive disclosures concerning all investment choices. An investment provider is responsible for any violations of these rules by a representative who is marketing the investment provider's investment options. An active investment provider shall notify the plan administrator in writing if the investment provider will be marketing its investment options through representatives. The notification must contain a complete identification of the representatives who will be marketing the options. Every representative and agent that enrolls eligible employees in the plan and is authorized by the investment provider to sign plan forms must be included on this notification.

(2) Disbursement methods and account values. When discussing distribution methods for an investment option, investment providers or representatives shall disclose to each participating employee or eligible employee all potential distribution methods and the potential income derived from each method for that option. An investment provider is responsible for any violations of these rules by a representative who is marketing the investment provider's investment options.

d. Approval of a disclosure form.

(1) An investment provider shall complete and submit to the plan administrator a disclosure form for each approved investment product. If a variable annuity product has several investment choices, the plan administrator must receive all disclosures related to those investment choices. An investment provider shall complete a disclosure on each investment product that has participating employee funds (including those no longer offered).

(2) If changes occur during the plan year, any changes must be submitted to the plan administrator for approval prior to their implementation. Disclosure forms will be updated quarterly. Even if no changes occur, an investment provider shall resubmit its disclosure form to the plan administrator for approval every year.

(3) If an investment provider or representative materially misstates a required disclosure or fails to provide disclosure, the plan administrator may sanction the investment provider or bind the investment provider to the disclosure as stated on the form.

e. Confidentiality. The plan administrator may provide any information that can be made available under the Iowa department of personnel's rules to all active investment providers. Notwithstanding any rule of the Iowa department of personnel to the contrary, the plan administrator shall make available to all active investment providers the names and home addresses of all state employees. The plan administrator may assess reasonable costs to the active investment providers to defray the expense of producing any requested information. All information obtained under the plan shall be confidential and used exclusively for purposes relating to the plan and as expressly contemplated by the service agreement or contract entered into by the investment provider.

f. Number of companies. Only investment providers who are selected through a competitive bid process, who are subsequently awarded a service agreement, and who are authorized to do business in the state of Iowa may sell annuities, mutual funds or other approved products under the plan, and then only if they agree to the terms, conditions, and provisions of the service agreement. At any given time, no more than 11 investment providers may be authorized to open new accounts for participating employees. Beginning January 1, 1999, during the term of a service agreement with the employer, any investment provider that does not enroll an average of 25 new participating employees per plan year will not be eligible for renewal as an active investment provider upon expiration of a service agreement except through a competitive bid process.

g. Company changes/transfers. If a participating employee wishes to change deferrals to another active investment provider within the plan, the participating employee shall submit forms to the plan administrator. The funds accumulated under the prior investment option may be transferred in total or in accordance with such other options offered by the active investment providers, according to the participating employee's direction to the plan administrator, to the new investment option. The appropriate forms shall be provided to the plan administrator prior to requesting the surrender or partial withdrawal of an existing account. A participating employee may request at any time during the calendar year to transfer accumulated funds from an investment provider to another active investment provider offered under the plan. A participating employee may only transfer an account to an investment provider that is not active if the participating employee already has an established account with the investment provider and the transfer does not necessitate the creation of a new account. A participating employee may change investment providers at any time during the calendar year. Surrender charges pursuant to individual participant investment contracts may apply. In the event of a transfer, participating employees who have made irrevocable elections as required under the plan will be required to maintain this election under the new investment provider.

15.6(16) *Investment of deferred amounts.*

a. The deferred amounts shall be delivered by the employer to investment providers or their designated agents for investment as designated by the participating employee or beneficiary.

b. Investment providers shall use the participating employee's or beneficiary's investment specifications to determine the value of the deferred account maintained with respect to the participating employee and shall invest the deferred amounts according to such specifications.

c. All interest, dividends, charges for premiums and administrative expenses, as well as changes in value due to market fluctuations applicable to each participating employee's account, shall be credited or debited to the account as they occur.

d. All assets of the plan, including all deferred amounts, property, and rights purchased with deferred amounts, as well as all income attributable to such deferred amounts, property or rights, shall be held in a trust, custodial account, or an annuity contract, in accordance with the provisions of the plan, and shall be held (until made available to the participating employee or beneficiary) for the exclusive benefit of the participating employees and their beneficiaries.

15.6(17) *Investment option removal/replacement.* The plan administrator may determine that an investment option offered under the plan is no longer acceptable for inclusion in the program. If the plan administrator decides to remove an investment option from the plan as the result of the option's failure to meet the established evaluation criteria and according to the recommendations of consultants or advisors, the option shall be removed or phased out of the plan. Employees newly enrolling in the plan shall be informed in writing that the terminating investment option does not meet the evaluation criteria and that this investment option is not open to new enrollments.

a. Any participating employees already deferring to the terminating investment option shall be informed in writing that they need to redirect future deferrals from this option to an alternative investment option offered under the plan by notifying the plan administrator, unless otherwise directed, of their new investment choice.

b. At the end of a sufficient period, and with sufficient notice of not less than 45 days to participating employees, the plan administrator shall instruct an investment provider to automatically redirect any participating employee's deferrals that have not been redirected to an alternative investment option from the terminated option into another investment option offered by the plan. Existing participating employee account balances shall be allowed to remain in the terminating investment option during this period.

c. Participating employees may subsequently be directed to transfer existing balances from the terminating option to another investment option offered under the plan. If any participating employee has failed to move a remaining account balance from the terminated investment option, the plan administrator shall instruct an investment provider to automatically move that participating employee's account balance into another designated alternative investment option offered under the plan.

d. At any time during this process, the plan administrator may reexamine the performance of the terminating investment option and the recommendations of consultants and advisors to determine if the investment option's continued plan participation is justified.

15.6(18) *Demutualization of companies.*

a. An investment provider that is a mutual company and that provides any annuity product or life insurance product held under the plan shall provide the plan administrator with a ballot(s) for official vote registration. The ballot(s) shall be completed and returned to the company according to the specified deadline in the instructions. The ballot(s) shall include the owner's name, policy numbers of affected contracts, name of annuitant or insured, number of shares anticipated, and the control number for the group of shares.

b. The company shall provide the plan administrator with a policyholder booklet, as well as instructions and guide information, prior to or in conjunction with the delivery of the ballot(s). Notices of progress, time frames and meetings will also be provided to the plan administrator as such information becomes available.

c. Compensation will be provided in cash according to the terms of the demutualization plan. In the event that stocks are issued in lieu of cash, the company shall issue all certificates to the employer on behalf of the affected participants and shall provide a listing which includes participants' names, social security numbers, policy numbers, and number of shares pro rata. The certification(s) will be delivered to the treasurer of the state of Iowa by the plan administrator for safekeeping within five workdays following receipt. The certificate(s) will be retrieved from the treasurer of the state of Iowa when an arrangement has been made with a stockbroker for the sale of the stock.

d. An arrangement will be entered into between the plan administrator and a stockbroker as soon as administratively possible in order to liquidate the stock for cash. The broker shall retain commission fees according to the arrangement entered into from the value obtained at the time of sale. The employer will not realize a tax liability nor will the participating employees.

e. The proceeds of the sale of the stock, less the broker commission, shall be made payable to the company. Cash will be immediately credited to the participating employee's accounts by the company. The company shall credit each participating employee's accounts pro rata based on the allotted shares per contract, and the plan administrator will be provided with a listing of the dollar amount credited to each participating employee's accounts. The company will credit the accounts based on the printout provided to the plan administrator. A statement of this transaction will also be provided by the company to participating employees at their home addresses upon completion of crediting of the accounts. The funds will be remitted to the company on a separate warrant and day from normal contributions. The company will report the investment return credit to the plan administrator in a specified format and show the credit under the earnings column.

f. In the event that dividends are issued prior to the sale of the stock, the dividends will be returned to the company and the company will credit each eligible account with the correct dividend based on the pro-rata shares. The company will also provide a statement to the participating employees at their home addresses which shows the credit of the dividend. The plan administrator shall be provided with a printout which includes a participating employee's name, social security number, policy number, and dollars credited.

581—15.7(19A) Dependent care. The director administers the dependent care program for employees of the state of Iowa. The plan is permitted under IRC Section 125. The plan is also a dependent care assistance plan under IRC Section 129. Administration of the plan shall comply with all applicable federal regulations and the Summary Plan Document. For purposes of this rule, the plan year is a calendar year.

15.7(1) *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the dependent care program. Temporary employees are not eligible to participate in this program.

15.7(2) *Enrollment*. An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing dependent care deduction amounts during the plan year, provided they have a qualifying change in family status as defined in the Summary Plan Document. To continue participation, employees shall reenroll each year during the open enrollment period.

15.7(3) *Termination of participation in the plan*. An employee may terminate participation in the plan provided the employee has a qualifying change in family status as defined in the Summary Plan Document. Employees who have terminated state employment and are later rehired within the same plan year cannot reenroll in the dependent care program until the subsequent plan year.

581—15.8(19A) Premium conversion plan (pretax program). The director administers the premium conversion plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. Pursuant to IRC Section 105, the plan is also an insured health care plan to the extent that participants use salary reduction to pay for health or dental insurance premiums. In accordance with IRC Section 79, the plan is also a group term life insurance plan to the extent that salary reduction is used for life insurance premiums. Administration of the plan shall comply with all federal regulations and the Summary Plan Document. For purposes of this rule, the plan year is January 1 to December 31 of each year.

15.8(1) *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the pretax conversion plan. Temporary employees are not eligible to participate in the plan.

15.8(2) *Enrollment*. An open enrollment period, as designated by the director, shall be held for employees who wish to make changes in their current pretax status. New employees will automatically be enrolled in the plan after satisfying any waiting period requirements for group insurance unless a change form is submitted. Employees also may change their existing pretax status during the plan year if they have a qualifying change in family status as defined in the Summary Plan Document.

15.8(3) *Termination of participation in the plan*. An employee may terminate participation in the plan during an open enrollment period. Otherwise, an employee may terminate participation if the employee has a qualifying change in family status as defined in the Summary Plan Document. Employees who have terminated state employment and are later rehired within the same plan year cannot reenroll in the pretax conversion plan until the subsequent plan year.

581—15.9(19A) Interviewing and moving expense reimbursement.

15.9(1) *Interviewing expenses*. If approved by the appointing authority, a person who interviews for state employment shall be reimbursed for expenses incurred in order to interview at the same rate at which an employee would be reimbursed for expenses incurred during the performance of state business.

15.9(2) *Moving expenses for reassigned employees*. A state employee who is reassigned or transferred at the direction of the appointing authority shall be reimbursed for moving and related expenses in accordance with the policies of the director or the applicable collective bargaining agreement. Eligibility for payment shall occur when all of the following conditions exist:

a. The employee is reassigned at the direction of the appointing authority;

b. The reassignment constitutes a permanent change in duty station beyond 25 miles;

c. The reassignment results in the employee changing the place of residence in order to be living within 25 miles of the new duty station, unless prior approval otherwise has been obtained from the director; and

d. The reassignment is not primarily for the benefit of the employee.

15.9(3) *Moving expenses for newly hired employees*. If approved by the appointing authority, a person newly hired may be reimbursed for moving and related expenses at the same rates used for the reimbursement of a current employee who has been reassigned or transferred. Reimbursement shall not occur until the employee is on the payroll.

15.9(4) *Repayment.* As a condition of receiving reimbursement for moving expenses, the recipient must sign an agreement to continue employment with the appointing authority for a period following the date of receipt of reimbursement that is deemed by the appointing authority to be commensurate with the amount of reimbursement received. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority a proportionate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the department of revenue and finance to ensure proper tax reporting.

581—15.10(19A) Education financial assistance. Education financial assistance may be granted for the purpose of assisting employees in developing skills that will improve their ability to perform job responsibilities. Assistance may be in the form of direct payment to the organization or institution, or by reimbursement to the employee as provided for in these rules.

15.10(1) *Employee eligibility.* Any nontemporary employee may be considered for education financial assistance.

15.10(2) *Workshop, seminar, or conference attendance*. The appointing authority may approve education financial assistance for an employee attending a workshop, seminar, or conference conducted by a professional, educational, or governmental organization or institution when attendance by the employee would not require a reduction in job responsibilities.

a. Assistance may be approved for meeting continuing education requirements when necessary to maintain a professional registration, certification, or license related to the duties and responsibilities of the employee's position.

b. Payment of registration fees and other costs, such as lodging, meals, and travel shall be in accordance with the policies and procedures of the department of revenue and finance.

c. If attendance is outside the state of Iowa, travel must first be authorized by the executive council, per Iowa Code section 421.38(2).

15.10(3) *Educational institution coursework.* Education financial assistance to an employee taking academic courses at an educational institution, with or without educational leave, shall require the preapproval of the appointing authority and the director. Requests for reimbursement shall be on forms prescribed by the director.

a. An employee may take academic courses at any accredited educational institution (university, college, area community college) within the state. Attendance at an out-of-state institution may be approved provided there are geographical or educational considerations which make attendance within the state impractical.

b. Reimbursement requests shall be made to the director prior to the employee taking the courses. If the director does not approve the request, the employee shall not be reimbursed.

c. Reimbursement may be approved for courses taken to meet continuing education requirements when necessary to maintain a professional registration, certification, or license when the courses relate to the duties and responsibilities of the employee's position.

d. An employee receiving other financial assistance, such as scholarship aid or veterans administration assistance, shall be eligible to receive education financial assistance only to the extent that the total of all methods of reimbursement does not exceed 100 percent of the payment of expenses.

e. In order to be reimbursed, the employee's department shall submit to the department of revenue and finance the employee's original paid receipt from the educational institution, the approved education financial assistance form, and proof of the employee's successful completion of the courses as follows:

(1) Undergraduate courses shall require at least a "C-" grade.

(2) Graduate courses shall require at least a "B-" grade.

(3) Successful completion of vocational or correspondence courses or continuing education courses shall require an official certificate, diploma or notice.

15.10(4) *Repayment*. As a condition of receiving reimbursement for education expenses, the recipient must sign an agreement to continue employment with the appointing authority for a period following the date of receipt of reimbursement that is deemed by the appointing authority to be commensurate with the amount of reimbursement received. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority an appropriate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the department of revenue and finance to ensure proper tax reporting.

15.10(5) *Annual report*. The appointing authority shall report to the director and legislative council, not later than October 1 of each year, the direct and indirect costs to the department for education financial assistance granted to employees during the preceding fiscal year in a manner prescribed by the director.

581—15.11(19A) Particular contracts governing. Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreement shall prevail for employees covered by the collective bargaining agreements.

581—15.12(19A) Tax-sheltered annuities (TSA).

15.12(1) *Administration.* The director is authorized by Iowa Code section 19A.30 to administer a tax-sheltered annuity program for eligible employees.

15.12(2) *Definitions.* The following definitions shall apply when used in this rule:

"Company" means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under Iowa Code section 19A.30.

"Employee" means a full-time or part-time nontemporary employee of the state of Iowa, including employees of the board of regents administrative staff on the centralized payroll system.

"Employer" means the state of Iowa.

"Normal retirement age" means 70½ years of age as defined by Internal Revenue Code (IRC) Section 403(b)(10).

"Participating employee" means an employee participating in the plan.

"Plan" means the tax-sheltered annuity plan authorized in Iowa Code section 19A.30.

"Plan administrator" means the designee of the director who is authorized to administer the tax-sheltered annuity plan.

"Plan year" means a calendar year.

"Policy" means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by Internal Revenue Code Section 403(b) and Iowa Code section 19A.30.

"Salary reduction agreement" means the tax-sheltered annuity agreement signed by the participating employee and employer.

15.12(3) *Eligibility.*

a. Initial eligibility. Any full-time or part-time nontemporary employee who is regularly scheduled to work for 20 or more hours per week and who works for the department of education or the board of regents administrative office is eligible to defer compensation under this rule. Final determination on eligibility shall rest with the plan administrator.

b. Eligibility after terminating deferral of compensation. Any employee who terminates the deferral of compensation may choose to reenroll in the plan in accordance with paragraphs 15.12(4)*"a"* and *"b"* and 15.12(6)*"b."*

15.12(4) *Enrollment and termination.*

a. Enrollment. Employees may enroll in the tax-sheltered annuity plan at any time. Employees are responsible for selection and monitoring of their investment vehicle. The request for a salary reduction agreement must be submitted to the employing agency personnel assistant for approval in accordance with subrule 15.12(11). A satisfactorily completed enrollment form must be received by the plan administrator no later than the first day of a calendar month in order for deductions to begin with the first paycheck of the following month. Deductions shall be taken from the employee's paycheck beginning no sooner than the first paycheck of the following month. The policy shall become effective on the first day of the month following the beginning of payroll deductions. Agencies are responsible for timely submission of payroll documents to initiate salary deductions.

b. Forms submission. Within five calendar days following the first day of the pay period in which the first deduction is to be made, the employing agency shall provide the plan administrator with the applicable enrollment form. A form received after that date will be processed later, and the effective date of the deduction will be changed to reflect the first payroll deduction of the following month.

c. Termination of participation in the plan. A participating employee may terminate participation in the plan provided notification is received by the employee's department ten days prior to the employee's first deduction of the month.

d. Availability of forms. It is the responsibility of each employee interested in participating in the program to obtain the necessary forms from the agency of employment. It is the responsibility of each agency to inform its employees where and how they may obtain these forms. The forms shall be prescribed by the plan administrator, and agencies shall be advised as to their availability.

15.12(5) *Tax status.*

a. FICA and IPERS. The amount of compensation deferred under the salary reduction agreement shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

b. Federal and state income taxes. The amount of earned compensation deferred under the agreement is exempt from federal and state income taxes until such time as the funds are paid or made available as provided In IRC Section 403(b).

15.12(6) *Deductions from earnings.*

a. When deducted. Each participating employee shall have the option as to whether the entire monthly amount of deferred compensation shall be deducted from the first paycheck of the month, the second paycheck of the month, or be equally divided between the first and second paychecks received during the month. If the monthly deferral cannot be divided into two equal payments, the third option is not available. Deferrals will not be deducted from the third paycheck of a month.

b. Deferral amount changes. Participating employees may increase or decrease their monthly deferral amount once each quarter during the calendar year by giving not less than 30 days' prior written notice to the plan administrator. The tax-sheltered annuity "salary reduction agreement" form, as provided for in paragraph 15.12(11)"*a,*" must be submitted to the plan administrator by the employee's agency within the first five calendar days after the first day of the pay period in which the first deduction is to be made. The first premium shall be deducted from the employee's paycheck beginning with the first paycheck of the second month following satisfactory completion of the prescribed form. Contributions can be changed to permit a one-time lump sum deferral from the last paycheck due to termination of employment.

c. Maximum deferral limits. Employees' deferrals may not exceed 20 percent of their annual gross salary minus IRC Section 125 pretax and dependent care deductions, with a maximum limitation of $9500 per calendar year or as otherwise provided for in the Internal Revenue Code. Calculations will be based on the FICA taxable wages.

d. Minimum amount deferred. The minimum amount of deferred compensation to be deducted from the earnings of a participating employee during any month shall be $25.

15.12(7) *Companies.*

a. Identification number. Each participating company shall be assigned an identification number by the plan administrator.

b. Time of payment. Payments shall be transmitted by the plan administrator to the companies within ten calendar days after the last workday of each month.

c. Annual status report. An annual status report stating the value of each participant's policy shall be provided by each company to the participating employee at the employee's home address. This practice shall be continued even after the participating employee terminates or cancels participation in the program. These annual reports are required as long as a value exists in the contract or any activity occurs during the year.

d. Method of payment. Each company shall be paid by one warrant each month regardless of the number of individual accounts with the company. Companies must minimize crediting errors and provide timely and reasonable credit resolution.

e. Solicitation. There shall be no solicitation of employees by companies at the employees' workplace during employees' work hours, except as authorized by the plan administrator.

f. Dividends. The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

g. Removal from participation. Failure to comply with the provisions of these rules will result in permanent removal as a participating company and may require that the monthly ongoing deferrals to existing contracts be discontinued, as determined by the director.

15.12(8) *Disposition of funds.*

a. Termination of employment. An employee who has terminated state employment (including retirement) must make arrangements directly with the company to defer distributions or withdraw funds under any option available in the policy. If an employee elects to start receiving benefits at the normal retirement age, the amount withdrawn each year shall equal a settlement option which meets or exceeds the IRS minimum distribution requirements. Distribution will be made in accordance with applicable IRS regulations. If the former employee works beyond the age of 70½, the employee shall select a retirement option within 30 days after termination of employment.

b. Financial hardship. A participating employee may request that the company allow the withdrawal of some or all of the funds from the policy based on a financial hardship and in accordance with 401(k) regulations. Deferrals to a TSA will not be allowed for one year after such withdrawal according to IRC Section 403(b)(7).

c. Method of payment. The employee must notify the company of the intent to withdraw funds.

d. Federal and state withholding taxes. It shall be the responsibility of the company or mutual fund provider, when making payments to the former employee, to withhold the required federal and state income tax based on W-4P, to remit them timely to the proper government agency, and to file all necessary reports as required by federal and state regulations, including IRS Form 1099R.

e. Federal penalties.

(1) Under IRC Section 72(t), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). A Section 403(b) contract is a qualified plan for these purposes.

(2) Eligible rollover distributions from a contract described in IRC Section 402(f)(2)(a) must be directed entirely to another TSA or IRA plan within 60 days following the withdrawal, or the funds must be left in the original contract. If the funds are not directed to a new qualified plan provider, the payor is required by IRC Section 3405(c) to withhold the mandatory percentage.

(3) A 15 percent excise tax applies if a participant takes an excess distribution in one year that is greater than the amount provided for in IRC Section 4980(a). Effective with the Small Business and Job Protection Act of 1996, the 15 percent excise tax has been repealed during years beginning after December 31, 1996, and before January 1, 2000.

15.12(9) *Group plans.*

a. Availability. Iowa Code section 19A.30 provides that the director may arrange for the purchase of group contracts for employees.

b. Size of groups. One or more employees shall constitute a group under this program.

15.12(10) *General.*

a. Orientation and information meetings. Agencies may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings. The presence of a representative of a company will be interpreted as solicitation.

b. Location of policies. The company shall send the original policy to the employee.

c. Number of companies. Employees shall be limited to deferring contributions to only one company at a time. Only life insurance companies or mutual fund providers authorized to do business in the state of Iowa may sell policies under the plan, and then only if they agree to perform the specified administrative functions under the plan.

d. Company changes.

(1) If a participating employee wishes to change deferrals to another company, the employee shall submit forms to the plan administrator in accordance with paragraph 15.12(6)*"b."* The new company policy shall be effective on the first day of the month following the initial month of payroll deduction.

(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy in accordance with applicable IRC Section 403(b) provisions. It is the responsibility of the employee and the company's agent to coordinate this change with the affected companies.

(3) An employee may change companies at any time during the calendar year. However, if the employee has already made one change during the current calendar quarter, the amount being deferred must remain the same as of the effective date of the change.

e. Deferred compensation or tax-sheltered annuity participation—maximum contribution. Employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to participate in one or the other of the programs, but not both. If, in the same calendar year, an eligible employee changes from a deferred compensation plan to a tax-sheltered annuity plan or vice versa, the maximum deferral for that calendar year for both plans combined may not exceed $7500, and all deferrals made in that calendar year, regardless of which plan, must be included when determining the remaining amount that can be deferred in that calendar year.

f. Employee termination from a tax-sheltered annuity eligible agency. When an employee leaves an agency that is eligible for tax-sheltered annuity participation under IRC Section 403(b), no further tax-sheltered annuity deductions will be allowed.

g. Direct transfer/rollover.

(1) An eligible roll-over distribution that is directly rolled over to an eligible retirement plan is considered to be a distribution followed by an immediate rollover. Amounts are subject to Section 403(b)(11) or 403(b)(7) withdrawal restrictions and are not eligible for rollover. Spousal consent and other similar participant and beneficiary protection rules apply.

(2) A direct transfer pursuant to IRS ruling 90-24 is not treated as a plan distribution. Amounts subject to Section 403(b)(11) or 403(b)(7) withdrawal restrictions may be transferred to another Section 403(b) funding vehicle provided the new funding vehicle imposes as stringent withdrawal restrictions as the old funding vehicle imposed prior to the transfer.

(3) A direct transfer may not be made to an IRA and is not limited to the participant or spouse beneficiary. Any beneficiary under an IRC Section 403(b) annuity is eligible to effect a direct transfer between Section 403(b) funding vehicles under IRS ruling 90-24.

(4) A participant may roll over an eligible roll-over distribution within 60 days following the date the distribution is received.

15.12(11) *Forms.* The administration of the TSA program shall be accomplished through the forms described in this subrule. Except as otherwise provided, all forms shall be developed by the plan administrator and distributed by the agency of employment.

a. Salary reduction agreement. This form shall authorize the plan administrator to make a stated dollar deduction from the participating employee's compensation as part of an IRC Section 403(b) plan.

b. Application for policy. A policy application form shall be supplied by the company to which the participating employee elects to defer compensation. The completed form shall be approved by the participating employee. The completed application form shall show the owner and beneficiary of the policy to be the participating employee.

15.12(12) *Forfeiture.* Section 403(b)(1)(c) of the IRC provides that an employee's interest in a Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

15.12(13) *Nontransferability.* The interest of the employee in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

581—15.13(19A) Health flexible spending account. The director administers the medical spending account program for employees of the state of Iowa. The plan is permitted under IRC § 125. Administration of the plan shall comply with all applicable federal regulations and the plan document. To the extent that the provisions of the plan document or administrative rule conflict with IRC § 125, the provisions of IRC § 125 shall govern. For purposes of this rule, the plan year is a calendar year.

15.13(1) *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the medical spending program. Temporary employees are not eligible to participate in this program. Employees subject to a collective bargaining agreement shall have their eligibility determined by the collective bargaining agreement.

15.13(2) *Enrollment.* An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing medical spending salary reduction amounts during the plan year, provided they have a qualifying change in status as defined in the plan document, and as permitted under IRC § 125. To continue participation, employees shall reenroll each year during the open enrollment period.

15.13(3) *Modification or termination of participation in the plan.* An employee may modify or terminate participation in the plan, provided the employee has a qualifying change in status as defined in the plan document, and as permitted under IRC § 125. Employees who have terminated state employment and are later rehired within the same plan year cannot reenroll in the medical spending program until the subsequent plan year.

15.13(4) *Continuation of coverage.* The medical spending account shall provide the opportunity to continue coverage as required by applicable state and federal laws.

15.13(5) *Eligible health care expenses.* The types of expenses eligible for reimbursement shall be consistent with medical expenses as defined under IRC § 213.

15.13(6) *Acceptable proof of eligible expense.* Only those expenses for which appropriate documentation is submitted shall be eligible for reimbursement. Such documentation shall include the date upon which the expense was incurred; sufficient evidence that the expense is an eligible health care expense; evidence that the expense has been incurred and will not be reimbursed under an otherwise qualified health plan authorized by IRC § 105 and 106; and the amount of such expense.

15.13(7) *Appeal process*. In the event that a participant disagrees with a determination as to reimbursement from the health flexible spending account program, a formal appeals mechanism is hereby provided. The participant may submit a formal appeal in writing to the director (or designee). Such appeal must be accompanied by a previous written request for favorable consideration to the designated administrator of the program, along with evidence as to an unfavorable determination in response to this request. Upon receipt of a qualified appeal, the director (or designee) shall provide a written determination within 30 days of receipt. Such determination shall be final and binding. This appeal process is not a contested case proceeding as defined by Iowa Code chapter 17A.

15.13(8) *Third-party administrator.* The director may contract with a third-party administrator to perform such actions as are reasonably necessary to administer the health flexible spending account program.

581—15.14(19A) Deferred compensation match program. The director is authorized by the governing body to administer a deferred compensation match program for employees of the state of Iowa and those of other eligible participating governmental employers. The program shall be qualified under Section 401(a) IRC and Iowa Code section 509A.12. The assets and income of the program shall be held in trust for the exclusive benefit of the participating employee or the participating employee's beneficiary. The trustee shall be the director of the Iowa department of personnel. The director shall adopt various investment options for the investment of program funds by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

The program shall match eligible participant contributions to the deferred compensation plan with contributions by the employer. Eligibility of participants and the rate of employer matching contributions shall be subject to determination by the trustee and the governing body. The only voluntary participant contributions that the program shall accept are eligible rollover contributions.

These rules are intended to implement Iowa Code sections 19A.1 to 19A.9 and 2000 Iowa Acts, House File 2463, section 13.

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